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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91207774
Party	Plaintiff Fox Restaurant Concepts LLC
Correspondence Address	GLENN SPENCER BACAL BACAL LAW GROUP PC 6991 E CAMELBACK ROAD, SUITE D-102 SCOTTSDALE, AZ 85251 UNITED STATES glenn.bacal@bacalgroup.com,jamie.tuccio@bacalgroup.com,david.andersen@bacalgroup.com
Submission	Motion for Default Judgment
Filer's Name	Glenn S. Bacal
Filer's e-mail	glenn.bacal@bacalgroup.com,jamie.tuccio@bacalgroup.com,david.andersen@bacalgroup.com
Signature	/Glenn S. Bacal/
Date	12/20/2012
Attachments	Motion for Default Judgment.pdf (3 pages)(20254 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Fox Restaurant Concepts LLC,

Opposer,

v.

Jimmy Rufus,

Applicant.

Opposition No. 91207774

Serial No.: 85/525829

For the mark: SIN BURGER

Published for Opposition:
July 3, 2012

Motion for Default Judgment

Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure (“FRCP”), Trademark Rules of Practice 2.106(a), and Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) §§ 312.01, and 508, Opposer Fox Restaurant Concepts LLC (“Opposer”) respectfully requests that the Trademark Trial and Appeal Board (“TTAB”) enter a judgment of default against Applicant Jimmy Rufus (“Applicant”) and sustain the Opposition against Applicant’s application to register the mark SIN BURGER (Ser. No. 85/525829) (the “Application”), on the grounds that Applicant has failed to file a timely Answer to Opposer’s Notice of Opposition.

FRCP 55(a) provides, “When a party against whom judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit otherwise, the clerk shall enter the party’s default.” TBMP §508 allows a plaintiff to file a motion for default judgment “as a substitute for the Board’s issuance of a notice of default.”

Opposer filed its Notice of Opposition on October 30, 2012. Through its Opposition, Opposer seeks refusal of Applicant’s Application to register the mark SIN BURGER. The TTAB provided notice that Applicant’s Answer was due on December 10, 2012. Applicant has

not filed an Answer with the TTAB nor served an answer upon Opposer. Therefore, Applicant is deemed to have admitted all well-pleaded allegations in the Notice of Opposition. *See Weather Bound Inc. v. Outer Limits Sportswear, Inc.*, 192 U.S.P.Q. 218 (TTAB 1976) (“In effect, the failure of the defending party to answer is taken as an admission of the truth of the facts stated in the complaint of the adverse party, and the [TTAB] may properly base its determination on such an admission.”). As a result, default judgment against Applicant and in favor of Opposer is proper.

Accordingly, pursuant to FRCP 55(a), Opposer requests that the TTAB enter default judgment against Applicant, sustain the opposition, and order that registration of the mark SIN BURGER (App. Ser. No. 85/525829) be refused.

Respectfully submitted this 20th day of December, 2012.

BACAL LAW GROUP, P.C.

By: /s/Glenn Spencer Bacal
Glenn S. Bacal
David A. Andersen
BACAL LAW GROUP
6991 E. Camelback Rd., Ste. D-102
Scottsdale, AZ 85251
Telephone: 480.245.6233
Fax: 480.245.6231

*Attorneys for Opposer,
Fox Restaurant Concepts LLC*

Certificate of Mailing or Transmission Pursuant to 37 C.F.R. § 2.119

Application No.: 85/525829
Mark: SIN BURGER
Opposer: Fox Restaurant Concepts LLC
Type of Filing: Motion for Default Judgment

I hereby certify that this Motion for Default Judgment is being filed electronically with the United States Trademark Trial and Appeal board 37 C.F.R. §1.8.

I hereby further certify that this Notice of Opposition is being sent via Express Mail addressed to correspondent of record as required by the rules:

Jimmy Rufus
5501 Fort Ave.
Lynchburg, Virginia 24502

Signature: /s/Jamie Tuccio

Date: December 20, 2012